

**BOARD OF ASSESSMENT APPEALS
STATE OF COLORADO
Docket Number 36955**

ORDER

HOME DEPOT USA, INC.,

Petitioner,

vs.

PUEBLO COUNTY BOARD OF COMMISSIONERS,

Respondent.

THIS MATTER was heard by the Board of Assessment Appeals on October 6, 2000, Harry J. Fuller, Mark R. Linné, and Karen E. Hart presiding. Petitioner was represented by Mark Chadwick, Esq. Respondent was represented by Tami Yellico, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**PERSONAL PROPERTY
(Pueblo County Schedule Nos. 204 & 150)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1998 and 1999. The subject property consists of personal property located at the Home Depot store at 4450 North Freeway, Pueblo, Colorado.

ISSUES:

Petitioner:

Petitioner contends that too much personal property is listed. Home Depot included real property items on their personal property list, which has since been corrected. The second issue is that the cost method does not take into account market value. The law requires that the market approach must be considered.

Petitioner has submitted a market appraisal.

Respondent:

Respondent contends that the assessor considered all three approaches to value but used the cost approach. Respondent considers the disputed items to be personal property as they are necessary only to the business, not the building, and are therefore not real property. Petitioner's appraisal has not followed the basic minimum standards for sales data comparison. The Internet information is an offering, not sales data.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. William Campbell, Jr., Property Tax Consultant with Marvin Poer, and a Texas Licensed Appraiser, testified that he does personal property business for Home Depot in three states including Colorado.

2. Mr. Campbell testified that he receives Home Depot's fixed asset ledger electronically after the books are closed. He then attempts to classify them according to statute, breaking them into real or personal property. He filed Respondent's personal property declarations for 1998 and 1999.

3. Mr. Campbell testified that he felt the information received from the taxpayer was unclear as to whether the assets were real or personal property. This was due to Home Depot's fixed asset accounting system. He also recognized that cost does not often match market value. He recommended to the client that the property be appraised to determine fair market value, exclude real property items, and to identify ghost assets.

4. Mr. Campbell described different portions of Petitioner's Exhibit 1. The exhibit contains letters regarding various issues, Mr. Fox's appraisal report, an asset listing, the Division of Property Taxation (DPT) personal property manual, and various other documents.

5. Under cross-examination, Mr. Campbell testified that some of the reported assets are ghost assets, but he admitted he could not give a specific list for those items. Often items are transferred, sold, destroyed, consumed, etc., and are not found in the stores. Respondent's accounting system has deficiencies. The employees sometimes fail to remove replaced items from the system. He defined "ghost assets" as those that are reported but are not there. He admitted that the subject property store is only 2 years old but that with the terrific volume it experiences, the reports are not filed accurately. Although he prepared the declaration schedules, he did not feel at the time that they were accurate.

6. Petitioner's witness, Mr. John Fox, of Fox & Associates, presented an indicated value of \$480,940.00 for the subject property, based on the market approach.

7. Mr. Fox testified that he was hired by Home Depot to review the company's personal property listings. He was supplied a list of assets, but could not identify specific items. He decided that he needed to do a store by store inspection.

8. Mr. Fox testified that he identified portions of the assets that were real and not personal property. There was an energy management system that is an integral part of the energy panel, and a specialty asset was discovered to be the canopy and greenhouse in the garden section. Also, some items were actually construction costs of the building. He reviewed Colorado law to see what was defined as real versus personal property.

9. Mr. Fox testified that he did a complete walk-through of the property. He inventoried all of the items in the rooms in the back and front of the store, then he listed each isle. It took about 8 hours to complete the walk-through. He then classified the equipment by 5 different types: office furniture, computer, security, telephone, and store. He attempted to reconcile his list with the Home Depot asset ledger, but was unable to.

10. Regarding the personal and real property definitions, Mr. Fox testified that he read the DPT manual and Colorado Statutes regarding classification, fixtures, and fair market value. For fixtures, he believed that they are considered personal property if the equipment is attached to the building. If it is permanently attached, it should be classified as real property. Examples of objects that were once movable chattel but have become permanently attached to the property are items such as heating, electrical, and plumbing.

11. Mr. Fox testified that he prepared a listing of items that should not have been reported as personal property. It is located in Section 4 of Exhibit 1. The general category heading is "Building." The subcategory "EMS" is an electronic device attached to the electrical panel; it shuts down the demand to save on the electrical bill. It is an integral part of the electrical system and would stay there forever.

12. The subcategory "Exterior Sign" is the Home Depot sign located on the freeway. It has a concrete foundation with a steel pipe that goes to a steel sign. It cannot be moved to another location and is an essential part of the building. The costs came from the Home Depot asset ledger.

13. The subcategory "General Re" is a part of the original construction contract for the building.

14. Regarding the subcategory "Lumber," Mr. Fox testified that there were displays in the kitchen and bath area that were completed after the store was opened. Materials from the lumber department are used to build the permanent displays. By permanent, he means nailed to the floor, installed counter tops and sinks, permanent cabinets, etc. These items must be completely torn out and scrapped when the displays are remodeled. They are permanent items attached to the building. Some are actually walls. Walls in the design area are used to separate the design center from the rest of the store.

15. Regarding the subcategory "Merchandise," he has received more information since he prepared his report. Certain displays are for wallpaper and rugs. Those brackets are, in fact, included in his report as personal property already. They need to be removed from the building category.

16. Mr. Fox explained other asset categories. "Millwork" is the lumber used in the kitchen area, such as studs and refined wood products, moldings, cabinet works, etc. "Other Inst" is the cost of the contractors to build the stud walls and do the mill work for the displays and the interior work of the building. They are part of the building itself.

17. Regarding the subcategory "Pneumatic," Mr. Fox testified that it is the cash delivery system from the front of the store to the accounting office. This is real property as it only includes the delivery system, which is the tubes. It is permanently affixed. The money goes directly into a locked safe. He has seen this system used in other types of businesses.

18. Mr. Fox testified that the subcategory "Sensormatic" is a security system located throughout the building. The main control boxes are at the front of the store. There are 6 or 8 entrance outlets. It is actually built into the concrete slab floor and rises up a few feet. The main tubing is in the concrete slab. It is permanently buried into the concrete and cannot be removed.

19. Regarding the asset subcategory "Shop And Whl," Mr. Fox testified that he now knows this is part of the receiving area personal property that he has already included in his report as personal property, so it must be removed from this category.

20. "Specialty" is the greenhouse structure and the garden department of the store. It has lighting, heating, and air conditioning that are permanently affixed. It has the characteristics of a building.

21. Mr. Fox removed the subcategories "Merchandise" and "Shop & Whl" from the "Building" category and amended the total cost amount to \$560,895.00.

22. Mr. Fox testified that the balance of his review of the asset ledger does not relate to his classification except the "Unknown" category. Included in this category are fans and heaters that are used seasonally in the building, forklifts, freight and sales tax.

23. Mr. Fox testified regarding security systems being personal property in the law and pointed out that the reference is to residential security systems and not a commercial application. Air conditioning and electrical systems are considered a part of the building, and Mr. Fox does not know why a security system would not be.

24. Mr. Fox testified regarding his personal property classes and values. He used the blue book "retail" value as a "value-in-place." He testified that the blue book is a result of actual market transactions and translates to fair market value. The DPT manual allows the use of such sources.

25. Mr. Fox testified that the biggest item in the store is the racking. He counted and categorized them by size, and priced them out according to web site information. He looked at a legitimate used market site. He utilized higher values than what was indicated in order to account for "value-in-place."

26. Mr. Fox also reviewed Home Depot's transfer records as found in Exhibit 1, Section 8, page 3. These are racks that had been transferred from stores and sold. The racks that he valued at \$40.00 are sold in liquidation for \$8.00. His exploration of other prices indicates a liquidation value of $\frac{1}{2}$ to $\frac{1}{4}$ the original cost. These are from stores that are 5 or 6 years old that decided to re-rack. Other stores in other states have re-racked and put design areas in the center of the store, rather than in the back. They generally just put in new racking and scrap or sell the old.

27. Mr. Fox testified that his value is higher than his source materials indicated as he has included installed cost and configuring for a "value-in-place." The web sites did not include installation costs. If he couldn't find the exact same equipment, he used the same depreciation based on his experience and his source materials, which are standard for use in his field.

28. Mr. Fox explained his appraisal report, which is Section 2 of Exhibit 1. It contains descriptions, classifications, and the manufacturer if known, as well as other information. He used the observed physical condition of the items. He did not include any obsolescence factors. His opinion of value is \$480,940.00 for the personal property. He did not include any value for the items he indicated were real property. The effective date of his appraisal is December 31, 1998. He feels the 1999 value is probably overstated because of the electronics obsolescence factor and the updating that would come at a later date. Otherwise, he feels his value conclusion would be appropriate for each year.

29. Mr. Fox testified that the reason the racking is valued significantly lower than the installation costs is due to the use factor. Due to physical depreciation, they depreciate very quickly. There is a low, middle and upper level. All of the merchandise is installed by forklifts and can actually compress the members. They may need to be removed because of damage sometimes caused by forklift drivers. Home Depot is reconfiguring the lumber section. Some of the racking was too high and the lumber was stressing the support beams.

30. Mr. Fox explained that the fair market value definition referred to willing buyers and sellers without duress. The FIREA law has a more complicated definition. There are instances where his values are much less than the original cost. In the area of computers, they become obsolete quickly as they have less functional utility. The store is loaded with electronic devices. They are constantly being upgraded and the depreciation is very high. The DPT guidelines are based on historical costs. His report was done utilizing market data. It tells how the marketplace has reacted to the obsolescence, which is driven by the market.

31. Under cross-examination, Mr. Fox admitted that he had no training in Colorado law. He reiterated that the items he removed from page 3 of Tab 4 in Exhibit 1 would not be added back into his personal property list, as they were already included in his listing. The real property was not listed in his personal property listing except for some ancillary items, such as some security detector wands.

32. Mr. Fox read portions of the DPT manual regarding the fixture definition. He considered safes to be fixtures as they are affixed to the property but could be removed. If an item would be destroyed when removed, he considers it to be a fixture. If it could be removed and not damaged, he considers it to be personal property.

33. Regarding the sensormatic system, it has miles of wire in the conduit in the floor and would need a jackhammer to remove it. The wire could not be reused if removed. The majority of it is buried in the concrete. He agreed that this building has other potential uses than just retail use. His report includes everything that was there on his date of inspection.

34. The original Home Depot asset listing was too general. He cannot answer to the things that were not there when he inspected the property. Mr. Campbell had overlooked some items that were miscoded and should have been real property. Mr. Campbell told him that he had included all of the items in Tab 3 of Exhibit 1 on his declaration.

35. Mr. Fox testified that in determining his fair market value, he assumed that the transactions would take at least 30 days and were not a quick sale liquidation type of transaction. He looked at sales of similar properties to find a value. Regarding his sources, there were no blue book costs for shelving. In some cases he added to the blue book prices, but usually he did not, as he used "retail" prices. He might have overstated some of the computer values.

36. Mr. Fox testified that he used data from the American Handling site (specifically for pallets) as a comparable. He feels an advertisement is an offer to sell at a bottom price and he pointed out that he used a higher value. He was to establish values based on a mass appraisal technique. He only used the Home Depot liquidated racking information as an example as to a low-end value. He did not use them to set the value. He knew that Home Depot bought their racking new from Interlake, but he did not know their purchasing practices. He primarily relied on used product sales. He adjusted

them for installation, an example being as much as 50% higher for beams and racking. He included all costs such as sales tax and freight to put the products into use in- place. He does not feel that the make has any bearing on value. Used dealers are selling everything at the same price. Mr. Fox testified that market data takes care of depreciation.

37. Under redirect, Mr. Fox testified that he interprets the DPT policy to be that if an item serves both the business and the building, it is real property.

38. Petitioner is requesting a 1998 and 1999 actual value of \$480,940.00 for the subject property for each year.

40. Respondent's witness, Mr. Byron Antonioni, the Personal Property Department Supervisor with the Pueblo County Assessor's Office presented the following indicated values, based on the cost approach:

Tax year 1998	\$1,455,586.00
Tax year 1999	\$1,453,828.00

41. Mr. Antonioni testified that he had received the personal property declarations and listings of property from Home Depot. At that time, he spoke with Mr. Campbell, who had prepared the listing. As of the date of the declaration schedule, the property was only 1 or 2 years old and they considered the property to be in good condition. The 1999 schedule was filed the same as the 1998 schedule, with some additions and some deletions.

42. Mr. Antonioni testified that he considered all three approaches to value. The income approach is usually derived from leased or rented equipment. Since none of the subject property was leased or rented, he did not consider it.

43. Regarding the market approach, Mr. Antonioni testified that similar sales located within the jurisdiction could not be found. He could not find comparable sales as Home Depot deals directly with the manufacturer.

44. They applied the cost approach, as the assessor's office did not believe that the declaration schedules contained any faulty or misleading information. Mr. Antonioni explained the steps used in the valuation process, which involves original cost, depreciation reference numbers, cost factors, life tables and percent good tables as published in the DPT personal property manual. Mr. Antonioni explained that assessors are bound by the DPT manual for valuing personal property in Colorado.

45. Mr. Antonioni testified regarding the sensormatic system. It is bolted to the floor of the building and was installed to prevent theft and control the shrinkage of the products. He read the IAAO definition of fixtures as located on page 44 at Tab II in Respondent's Exhibit A. He considered the sensormatic to be a trade fixture and not part of the real estate.

46. Regarding the pneumatic air tube system, the tubes come up from the checkout stands and are bolted to the rafters of the building. It then takes the cash tubes to the back offices and the safe. Again, he considers it to be a trade fixture. It is put there for the conduct of the business.

47. Regarding the signs, Mr. Antonioni testified that if they were to be considered real property, they would have a longer life and less depreciation with a resultant higher value. He agreed that they are attached to the land and building, but testified that they are of no use to another business if Home Depot should move. Once again, he considered the signs to be a trade fixture.

48. Mr. Antonioni proceeded to testify regarding the valuation process and assigned values for the signs, pneumatic system and sensormatic. The assigned values were as follows:

	<u>Tax Year 1998</u>	<u>Tax Year 1999</u>
Signs	\$103,213.00	\$97,123.00
Pneumatic	25,055.00	23,577.00
Sensormatic	49,126.00	46,228.00

49. Mr. Antonioni testified regarding the shelving and racking. The rack shelving is made out of steel box I-beams and can be used with many types of shelving units. The cantilevers are also made of steel I-beams and cantilever arms in order to support various types of lumber products. They determined the cost approach to be the most representative value and placed a value on the racking for 1998 of \$438,197.00 and for 1999 of \$414,062.00.

50. Mr. Antonioni testified that they obtained an Interlake catalog, which has a complete detail list of racks, shelves and cantilevers. They contacted Interlake, but they would not give Respondent any pricing on the shelving because Home Depot was a large customer of theirs. They also contacted an Interlake distributor in Massachusetts, who is the 10th largest distributor in the world. Their sales representative stated that the Interlake shelving is the Cadillac of the industry. He could not give them a price because of the buying habits of Home Depot.

51. Mr. Antonioni testified regarding which items from the asset listing he used to value the subject property. He used all of the assets listed in the "Building" category on page 1 of Tab 4 of Petitioner's Exhibit 1, except EMS, General Re, Merchandise of \$720.00, and Specialty. Every item in Tab 3 of Exhibit 1 was verified by him to have been included in the personal property listing that he had received previously. Mr. Antonioni pointed out that the computers were listed on Home Depot's Cost Tracking system as having a 5-year life, but he actually used a 4-year life as found in the DPT manual. Computers also have an accelerated depreciation factor.

52. Upon cross-examination, Mr. Antonioni reiterated that the cost approach was the most appropriate given the newness of the equipment. They considered market data but could not obtain the needed information to apply it. He was not convinced that Petitioner's appraisal was true market value as it was based on used equipment values. Everything in the store was new equipment. He did not have a breakdown of how Mr. Fox came up with his figures. He agreed that the DPT guidelines allow the use of equipment guides. He did not use any blue book data or other market data, as the information he had on the equipment was only bulk figures.

53. Mr. Antonioni testified that he would use actual sales if he could find some. He contacted several dealers in Pueblo and other areas, but could not come up with any sales he could use.

54. Mr. Antonioni testified that he did not feel as though the original cost listing filed by Petitioner contained any misleading information. He compared the prices with other similar shelving costs for other larger stores and confirmed they were somewhat comparable.

55. Regarding trade fixtures, Mr. Antonioni again testified that he considered the pneumatic and sensormatic systems to be trade fixtures. He admitted that they could serve other businesses as well as Home Depot. Regarding the exterior sign, he testified that the sign was only bolted to a concrete base and could be taken down. The Home Depot sign panels could be removed and new panels could be inserted. The signs located on the building itself are merely bolted to the building. He also pointed out that it is beneficial to be listed as personal property as a lower life is assigned.

56. Mr. Antonioni testified that he had inspected the property on several occasions.

57. Upon questioning from the Board, Mr. Antonioni clarified the process that he used to value the property. He used the cost figures submitted by Petitioner, used his computer system to apply the various factors from the DPT manual, and compared the costs to similar types of stores to verify that the costs were reasonable. He attempted to find market data but could not find any. The equipment was new and the cost data appeared reasonable. He was not aware of any signs or security systems in commercial structures in Pueblo County that are classified as real property.

58. Under recross-examination, Mr. Antonioni testified that all signs and alarm systems belonging to other companies had been submitted to the assessor's office as personal property. There have not been disputes as to their being classified as personal property.

59. Petitioner's witness, Mr. Gordon White, a Commercial Property Appraiser with the Pueblo County Assessor's Office, testified that he had reviewed the appeal as to the used methodology and terminology. The basic difference in property being valued as real property versus personal property is in the depreciation. Real property is long lived.

60. The determination for personal property includes whether it could be removed without a detrimental effect to the property. The pneumatic system could be removed. Just because a potential buyer could use it does not make it a fixture. The alarm system protects the assets of the building and the sensormatic system protects the shrinkage of the business inventory, not the building. Signs are regularly removed and sold. It would be in the taxpayer's best interest to leave these items on as personal property.

61. Speaking as a review appraiser, Mr. White testified that he found some discrepancies in Petitioner's materials. To determine fair market value in the used market, the one thing that you must consider is the condition of the equipment. Regarding the Web page information, there is no indication in the material as to what the condition of the products are. The subject property racking is brand new and unique. It is modular. The nature of the shelving is that it can be replaced part by part.

62. Mr. White testified that there was no evidence as to how Mr. Fox determined his values in the appraisal, other than he used blue book "retail" value. The subject property is in good condition.

63. Under cross-examination, Mr. White testified that he could not give a fair market value for the equipment. His personal examination of the questioned items is how he determined that they were not fixtures. The pneumatic system is attached to the property, but he has personally removed a similar system. Regarding the sensormatic system, he saw it in place but not in its entirety. He did not notice that a portion was affixed in the concrete.

64. Respondent assigned an actual value to the subject property as follows:

Tax year 1998	\$1,455,586.00
Tax year 1999	\$1,453,828.00

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the tax year 1998 and 1999 valuation of the subject property was correct.

2. In Del Mesa Farms and BAA v. The BOE of Montrose County (97CA0686), the courts found that "...regardless of whether a particular item is affixed to a building and may otherwise constitute a fixture system, the item constitutes personal property if its use is primarily tied to a business operation."

3. As to the pneumatic and sensormatic systems, the Board is persuaded that these systems are primarily tied to the business operation of Petitioner and should therefore be considered personal property. Neither system is essential to the operation of the building. The Home Depot building could be operated without the disputed items.

4. The Board also concluded that the kitchen and bath displays, as well as the design areas should be considered personal property. The Board is convinced that the displays are of a temporary nature that can, and probably will, be redesigned and relocated at times throughout the life of the building. Although testimony indicated that the displays were attached to the floor of the building, the Board does not consider that fact compelling enough to consider them to be a permanent part of the building or to meet the definition of a fixture. Mr. Fox testified that remodeling has already occurred in other Home Depot stores and that the displays are subsequently scrapped. One of the considerations for personal property is the expected life of the property. The Board believes it is reasonable to assume that these displays are of a temporary nature and will have a considerably shorter life than that of the building itself.

5. As to the property signs, testimony indicated that signs can be considered either personal or real property, depending on the method of attachment. Mr. Fox testified that the signs were permanently attached to the building and land. Respondent's witnesses testified that the signs could be easily removable, and also indicated that all signs located within Pueblo County are listed as personal property. The Board was most persuaded by Respondent's witnesses and concludes that the valuation of the signs as personal property is proper.

6. Petitioner argued that the cost approach used by Respondent did not reflect true market value and that the market approach used by Mr. Fox was the most accurate valuation for the subject property.

7. The assessment date is January 1 of each year, and the personal property listings should include all personal property that was in place as of that date. Mr. Fox did not testify as to his inspection date of the property.

8. Testimony and evidence from Respondent indicated that there were additions and deletions of personal property reported on the declarations. Mr. Fox testified that he felt he might have overstated the value of the computers for 1999, but that otherwise he felt that the value would be equivalent for each year. However, Mr. Fox also testified that the racking suffers physical depreciation and is replaced when damaged. The Board recognizes that the changes in personal property over the years may have resulted in similar values. However, there is no property listing with sufficient detail available as of the assessment date for each year to verify that this is true for this case. The very nature of the valuation process would likely result in a varying valuation for each assessment date, especially when utilizing the cost approach.

9. The Board finds that the use of market value for personal property is an appropriate valuation method for personal property. However, without detailed year manufactured and manufacturer information, it is difficult to determine whether the market value given by Mr. Fox is correct. Mr. Fox testified that he added to the blue book retail value to account for the "value-in-use," but there was a lack of descriptive and supporting documentation to identify what the specific adjustments were and how they were determined, with the exception of some of the racking values.

10. After careful consideration of all the evidence and testimony, the Board concluded that there was insufficient information to determine an accurate market value for the subject property for each of the years under appeal.

11. Petitioner also argued that some of the personal property originally reported to Respondent was in fact real property, or was not present at the property location under appeal. The Board finds a lack of detailed information to support this argument. The original listings submitted to Respondent lacked manufacturer information and original dates of manufacture, as well as specific property item descriptions. Mr. Fox's listing lacks a year of manufacture. Also, some detailed item descriptions and manufacturer information is missing. Without such detail, the Board was unable to determine whether improperly classified or missing property was in fact reported to Respondent. In fact, Respondent's witness, Mr. Antonioni testified that he did not value the subcategory items labeled "EMS", "General Re", and "Specialty" items as personal property. The Board determined that the remaining subcategories in the "Building" category were properly valued by Respondent as personal property.

ORDER:

The petition is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 7th day of November, 2000.

BOARD OF ASSESSMENT APPEALS



Harry J. Fuller



Mark R. Linne

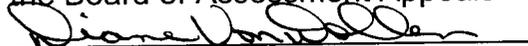


Karen E. Hart

This decision was put on the record

NOV 07 2000

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.



Diane Von Dollen



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